



## **Case Summary**

Randy Cobb appeals his conviction for attempted murder. We affirm.

### **Issue**

The issue before us is whether the evidence provided at trial is sufficient to sustain Cobb's conviction.

### **Facts**

The evidence most favorable to the conviction reveals that Jered Liechty purchased drugs from Randy Cobb at least fifteen times. In fact, Liechty and Cobb had an agreement: Cobb would provide Liechty drugs for his personal use in exchange for Liechty allowing a male nicknamed "DL" to sell drugs from Liechty's apartment located in Elkhart. Tr. p. 78. On one occasion, Cobb agreed to sell Liechty forty dollars worth of drugs on credit. Liechty agreed to repay Cobb once he received his unemployment check, which he anticipated would arrive by mail on October 17, 2003.

On October 17, 2003, Liechty's unemployment check had not arrived when he borrowed five dollars from a friend to purchase alcohol from a local liquor store. Meanwhile, Cobb and an acquaintance, Mike Watkins, observed Liechty walking away from the store with a bag and drove to Liechty's residence. When Liechty arrived, Cobb and Watkins were in Liechty's bedroom waiting for him.

Cobb confronted Liechty about the \$40.00 debt and asked whether the unemployment check had arrived. Liechty informed Cobb that the check had not arrived and Cobb became upset, complaining that if Liechty had money to purchase alcohol then he had money to pay him. Liechty was unable to produce the money so Cobb retrieved a

handgun from his pocket and pointed it at Liechty. Cobb pulled the trigger three times but the gun did not discharge. Cobb responded by saying, “God must be on your side today.” Tr. p. 101. Cobb then left the residence to retrieve a “gun that works.” Id. at 103.

Cobb returned five minutes later with a different handgun and confronted Liechty. Cobb fired a shot at Liechty, which hit him in his right thigh and shattered his femur. Moments later, the two began a struggle for control of the gun. As they wrestled, Watkins, still present at Liechty’s residence, hit both men with a baseball bat in an attempt to separate them. At some point during this struggle, the gun was pointed toward Liechty’s head and it discharged again, this time striking his ear.

On July 2, 2004, the State charged Cobb with Class A felony attempted murder. Following a jury trial, Cobb was found guilty as charged. Cobb now appeals.

### **Analysis**

Cobb contends that the evidence is insufficient to support his conviction for the attempted murder of Jered Liechty. When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Trimble v. State, 848 N.E.2d 278, 279 (Ind. 2006). If there is sufficient evidence of probative value to support the jury’s conclusion then the conviction will not be disturbed. Id.

To convict Cobb of attempted murder, the State was required to prove beyond a reasonable doubt that he acted with the intent to kill and engaged in conduct that amounted to a substantial step toward the commission of murder. Ind. Code §§ 35-41-5-1(a), 35-42-1-1. The intent to kill may be inferred from the deliberate use of a deadly

weapon in a manner likely to cause death or serious injury. Bethel v. State, 730 N.E.2d 1242, 1245 (Ind. 2000). Firing a handgun in the direction of another person is substantial evidence from which a jury may infer intent to kill. Shelton v. State, 602 N.E.2d 1017, 1022 (Ind. 1992).

Cobb argues that he did not act with the specific intent to kill Liechty. Specifically, Cobb claims the location of the gunshot wounds to Liechty's thigh and ear demonstrates that Cobb did not intend to kill Liechty. Moreover, Cobb argues the gunshot wound to Liechty's ear resulted from the struggle between him and Liechty for control of the handgun. In Shelton, the defendant fired two shots toward a firefighter hiding inside of a vehicle and was convicted of attempted murder. Our supreme court determined that firing a gun in the direction of another person is substantial evidence of specific intent to kill. Shelton, 602 N.E.2d at 1022. Similarly, in Brumbaugh v. State, 491 N.E.2d 983, 985 (Ind. 1986), the court upheld an attempted murder conviction when the facts established that the defendant shot at police officers from a distance of 200 yards. In Brumbaugh, the court rejected the defendant's argument that he did not intend to kill the officers, but only meant to frighten them. Id.

Here, the evidence is sufficient to prove that Cobb acted with the specific intent to kill Liechty. After attempting to shoot Liechty three times with a faulty handgun, Cobb left Liechty's home to retrieve "a gun that works." Tr. p. 103. About five minutes later, Cobb returned to Liechty's home with another handgun. Like the defendants in Shelton and Brumbaugh, Cobb fired a handgun at Liechty in a manner reasonably calculated to cause him death or great bodily harm. As a result, Liechty sustained gunshot injuries to

his thigh and ear. From this evidence, a reasonable juror could find beyond a reasonable doubt that Cobb intended to kill Liechty.

### **Conclusion**

The evidence presented at trial is sufficient to support Cobb's conviction. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.